

Readopt with amendment Ins 200, effective 2-5-10 (Document #9650-A), to read as follows:

CHAPTER Ins 200 PRACTICES AND PROCEDURES

Statutory Authority: RSA 400-A:15, I[-]; ***RSA 541-A:30-a, I***

PART Ins 201 GENERAL INFORMATION

Ins 201.01 Scope. The rules in this chapter shall govern all proceedings before the department.

PART Ins 202 DEFINITIONS

Ins 202.01 Definitions.

(a) "Adjudicative proceeding" means the procedure to be followed in contested cases, as set forth in RSA 541-A.

(b) "Commissioner" means the insurance commissioner.

(c) "Complainant" means a consumer who files a complaint or inquiry with the Department.

(d) "Confidential document" means a document that is confidential in its entirety because it contains confidential information and there is no practicable means of filing a redacted version of the document.

(e) "Confidential information" means:

(1) Information that is not public pursuant to state or federal statute, administrative or court rule, a prior court order placing the information under seal, or case law; or

(2) Information which, if publicly disclosed, would substantially impair:

a. the privacy interests of an individual; or

b. the business, financial, or commercial interests of an individual or entity.

~~([b])~~f) "Contested case" means "contested case" as defined in RSA 541-A:1 IV.

~~([c])~~ "Commissioner" means the insurance commissioner.]

~~([d])~~g) "Declaratory ruling" means "declaratory ruling" as defined in RSA 541-A:1, V.

~~([e])~~h) "Department" means the insurance department[, an independent regulatory agency].

~~([f])~~i) "Ex parte communications" means the transmittal of data or argument concerning the merits of the subject matter of any adjudicative proceeding to or from a hearing officer, ***commissioner, or any assistant or advisor to the hearing officer or commissioner*** without notice to all parties to the adjudicative proceeding.

~~([g])~~j) "Hearing" means the formal or informal receipt by the department of data or argument, or both, from persons.

~~([h])~~k) "Hearing officer" means the commissioner or if the commissioner is unavailable or unable to preside, the deputy commissioner or any natural person whom the commissioner has designated to preside over a hearing.

~~([i])~~ "License" means ~~[a formal authorization in the form of a document called a license issued by the licensing division or the examination division]~~ **"license" as defined in RSA 541-A:1, VIII.**

~~(j)~~ "Licensing" means "licensing" as defined in RSA 541-A:1, ~~[VIII]~~X.

~~(k)~~ "Motion" means any application by a party to a proceeding for an order relating to the proceeding.

~~(l)~~ "Order" means "order" as defined in RSA 541-A:1, XI.

~~(m)~~ "Party" means "party" as defined in RSA 541-A:1, XII.

~~(n)~~ "Person" means "person" as defined in RSA 541-A:1, XIII.

~~(o)~~ ***"Probation" means holding in abeyance the imposition of a license revocation or suspension, the payment of a monetary fine, or other penalty or punishment imposed by order, for a specific period of time, provided certain conditions are satisfied.***

~~(p)~~ "Proceeding" means any investigation, examination, hearing or adjudication in which the legal rights, duties or privileges of a person as set forth by statute or rule are determined by the department after opportunity for a hearing.

~~(q)~~ "Rule" means "rule" as defined in RSA 541-A:1, XV.

~~(r)~~ "Staff advocate" means any person designated by the commissioner to act as the advocate for the department in an adjudicative proceeding.

PART Ins 203 ~~[APPEARANCES BEFORE THE DEPARTMENT]~~**HEARING OFFICER**

Ins 203.01 Hearing Officer; Appointment; Authority.

(a) All hearings shall be conducted by a hearing officer.

(b) The commissioner or deputy commissioner shall act as hearing officer in any summary suspension hearing pursuant to Ins ~~[204]~~**206.04**. For all other hearings, the commissioner or deputy commissioner shall act as hearing officer or the commissioner shall appoint a natural person to act as hearing officer.

(c) If neither the commissioner nor deputy commissioner acts as hearing officer, the commissioner shall appoint a hearing officer who shall receive evidence and who shall be charged with preparing a proposed written decision and proposed order with recommendations for the final disposition of the case or for any dispositive motion, as set forth in Ins ~~[204-26]~~**207.04**.

(d) A hearing officer shall, as necessary:

- (1) Regulate and control the course of a hearing;
- (2) Facilitate an informal resolution of an appeal;
- (3) Administer oaths and affirmations;
- (4) Receive relevant evidence and exclude irrelevant, immaterial, or unduly repetitious evidence;
- (5) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the hearing officer's own motion;

- (6) Question any person who testifies;
- (7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI;
- (8) Communicate with all parties to an adjudicative proceeding regarding scheduling or procedural matters in writing, in person, by fax, electronic mail, or by telephone, in compliance with Ins ~~[203.08]~~**204.07**; and
- (9) Take any other action consistent with applicable statutes and rules necessary to conduct the hearing and complete the record in a fair and timely manner.

Ins 203.02 Withdrawal of Hearing Officer.

(a) Upon the hearing officer's own initiative or upon the motion or request of any party, a hearing officer shall, for good cause, withdraw from any appeal.

(b) Good cause shall exist if a hearing officer has a direct interest in the outcome of the hearing or any connection with the parties that would be likely to improperly influence his or her judgment.

(c) Mere knowledge of the issues, the parties, or any witness shall not constitute good cause for withdrawal.

Ins 203.03 Inquiry by Hearing Officer. The hearing officer in an adjudicative proceeding shall question witnesses and make such inquiry of witnesses, parties, or counsel as the hearing officer believes appropriate to promote the fair, accurate, and efficient resolution of issues pending before the department.

PART INS 204 APPEARANCES BEFORE THE DEPARTMENT

Ins ~~[203.03]~~**204.01** Who May Appear.

(a) Any ~~[person]~~**party** may appear in a proceeding either in person, ~~[or]~~ by a representative, or both.

(b) ***Each party shall file an appearance in the proceeding indicating an intention to appear on the date of the hearing.***

(c) ***If the party is represented, the representative shall file an appearance in accordance with Ins 204.02.***

(d) ***Appearances by the party and any representative shall be filed at the earliest date practical, but no later than 3 days before the scheduled hearing.***

(e) ***Any person seeking to intervene in a proceeding shall file a petition for intervention in accordance with RSA 541-A:32. Unless granted permission to intervene, such persons shall have no role in the proceeding.***

Ins ~~[203.04]~~**204.02** Representatives.

(a) A representative shall be either an attorney-at-law, licensed in New Hampshire~~[-, or such other individual including officers or employees of the person, as the person appearing shall designate]~~ ***or an officer or employee designated to represent a business entity.***

(b) Designation of an attorney-at-law or other representative shall ~~[be filed at the earliest date practical. The designation shall]~~:

(1) Be in writing; and

(2) Contain the following information:

- a. Name, address, and telephone number of designee;
- b. Title or name of matter pending before *the* department; and
- c. Duration of designation.

(c) No such form need be filed by officers or employees of the person.

(d) An attorney from another jurisdiction shall be permitted to participate in the proceedings if the attorney *files a motion for leave to appear providing proof the attorney* is in good standing [~~within his~~] *in their* home jurisdiction.

(e) Nothing in this rule shall be interpreted as permitting the unauthorized practice of law; nor shall this rule be construed to restrict or limit the right of any person to conduct his own business with the department.

Ins [~~203.05~~]**204.03** Right to Counsel. Any party in a proceeding may be represented by counsel. Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained.

Ins [~~203.06~~]**204.04** Prohibited Conduct and Representation.

(a) "Misconduct" means any act or non-act which would constitute misconduct of an "attorney-at law" as defined in the New Hampshire supreme court rules of professional conduct.

(b) The department shall, after notice and opportunity for hearing, upon a finding of misconduct as defined in this section, prohibit an individual from acting as representative for any and all pending or future matters, or any combination thereof, before the department.

(c) Upon a finding of misconduct by any attorney admitted to practice in New Hampshire, the matter shall be referred to the New Hampshire supreme court, committee on professional conduct, for such determination as they find appropriate.

Ins [~~203.07~~]**204.05** Staff of Department.

(a) Staff members of the department shall only participate in a proceeding as witnesses, technical assistants or advisors, or as otherwise provided in this chapter.

(b) The staff advocate shall be that person authorized to represent the department in an adjudicative proceeding.

***Ins 204.06** Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as witnesses or granted intervenor status, a complainant shall have no role in enforcement or disciplinary hearings.*

Ins [~~203.08~~]**204.07** Ex Parte Communications, Adjudicative Proceedings.

(a) Once an adjudicative proceeding has commenced, unless required for the disposition of ex parte matters authorized by law or exempt herein, no party shall communicate, directly or indirectly, with the *commissioner, the* hearing officer, or any assistant or advisor to the hearing officer[;] concerning the merits of the case, except upon notice and opportunity for all parties to participate.

(b) The notice and opportunity to participate requirement imposed pursuant to paragraph (a) shall not apply:

- (1) When a hearing officer has been appointed to receive evidence pursuant to Ins 203.01 (c) and communications between or among the commissioner and department staff are required for the proper administration of the business of the department;
- (2) To ex parte communications between or among the hearing officer and any assistant or advisor designated by the commissioner to assist the hearing officer; or
- (3) To ex parte communications with staff participating in the preparation of the final order after the commissioner has received, reviewed and determined whether to accept, reject or otherwise modify a proposed decision pursuant to Ins ~~[204.26]~~207.04.

(c) When the commissioner has appointed a hearing officer to receive evidence and enter a proposed decision pursuant to Ins 203.01 (c), there shall be no ex parte communications directly or indirectly between the hearing officer and the commissioner concerning the merits of the case.

~~[PART Ins 204 PREHEARINGS, HEARINGS, APPEALS TO THE COMMISSIONER OF
DEPARTMENT DECISIONS, RATEMAKING, SHOW CAUSE HEARINGS~~

~~Ins 204.01 Prehearings, Hearings, Adjudicative Proceedings, Contested Cases.~~

~~(a) In any matter before the department, other than rulemaking or a declaratory ruling, all motions, requests and actions shall be conducted pursuant to RSA 541-A:31 through 38.~~

~~(b) Hearings shall be conducted with the respondent, the department and any witnesses physically present before the hearing officer. A telephone hearing shall be conducted upon motion of any party if the hearing officer determines that:~~

- ~~(1) There is good cause as set forth in paragraph (c); and~~
- ~~(2) Conducting the hearing with one or more parties participating by telephone would not violate any law or rule or constitutional protections, and would promote the fair, accurate and efficient resolution of issues pending before the department.~~

~~(c) Good cause shall include:~~

- ~~(1) Excessive distance to the hearing location;~~
- ~~(2) Physical disability or impairment;~~
- ~~(3) Transportation difficulties;~~
- ~~(4) The physical presence of the respondent would threaten the health or safety of the respondent or any other individual; or~~
- ~~(5) Other circumstance that would prevent the respondent from being able to appear and participate in person at the hearing.~~

~~Ins 204.02 Waiver or Suspension of Procedural Rules. The hearing officer, upon the hearing officer's own initiative or upon the motion or petition of any interested person, shall suspend or waive any requirement or limitation imposed by this chapter not otherwise contrary to law, upon reasonable notice to affected persons, when the proposed waiver or suspension appears to be lawful and would be more likely~~

~~to promote the fair, accurate and efficient resolution of issues pending before the department than would adherence to a particular rule or procedure.~~

~~Ins 204.03 Effect of Failure to Comply with the Rules. Failure to comply with the rules in this part shall result in the denial of any petition or motion so failing to comply, or the rejection of any document so failing to comply, or the issuance of an order adverse to the person so failing to comply.~~

~~Ins 204.04 Summary Suspension of Department Issued Licenses.~~

~~(a) In the case of summary suspensions, the following general provisions shall apply:~~

- ~~(1) When the commissioner finds that public health, safety, or welfare requires emergency action, and incorporates a finding to that effect in such order, summary suspension of a license shall be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action;~~
- ~~(2) An order of summary suspension shall be served prior to, simultaneously with, or after the commencement of an adjudicative proceeding seeking the suspension or revocation of a license; and~~
- ~~(3) The order of summary suspension shall be served upon the holder of a license, either by personal service, by certified mail, return receipt requested, telegram, or by some other means for the purpose of directly informing the holder, and shall become effective either upon delivery or upon notice being received by the licensee.~~

~~(b) Notice and hearing, time limitations and other procedural requirements shall be as follows:~~

- ~~(1) Where an order of summary suspension has been issued and served prior to the institution of departmental disciplinary proceedings seeking the suspension or revocation of a license, a formal notice instituting such proceedings shall be served upon the licensee named therein and the hearing scheduled to commence within 10 working days. The licensee may make written application at any time for a hearing seeking relief from the suspension order and such hearing shall be held within 5 working days from the date of receipt of such request by the department. Such application for relief shall be determined within 5 working days after the close of the hearing relating to that issue;~~
- ~~(2) Where an order of suspension has been issued and served simultaneously with the service of the notice of disciplinary proceeding, such hearing shall be scheduled to commence at least 10 working days thereafter. The licensee may make written application at any time for a hearing seeking relief from the suspension order, and such hearing shall be held within 5 working days from the date of receipt of such request by the department. The determination of such application for relief shall be determined within 5 working days after the close of the hearing relating to the issue;~~
- ~~(3) In the event the order of suspension is issued and served after the disciplinary proceeding has commenced, the licensee may make written application at any time for a hearing seeking relief from the suspension order and such hearing shall be held within 5 working days from the date of receipt of such request by the department. The determination of such application for relief shall be determined within 5 working days after the close of the hearing relating to that issue; and~~
- ~~(4) The hearings in (b)(2) and (b)(3) above shall be conducted to avoid any delay that would threaten the public health, safety or welfare as set forth in RSA 541-A:30.~~

~~(c) The hearing officer shall render the decision in the disciplinary hearing within 10 days from the date of the close of such hearing and the receipt of the minutes pertaining to same. Failure to do so shall cause the order of summary suspension to be vacated.~~

~~(d) If a request is made by the licensee to submit a brief or memorandum in connection with the said disciplinary hearing and such request is granted, the aforesaid 10-day period to render a decision shall commence to run after receipt by the hearing officer of such brief or memorandum.~~

~~Ins 204.05 Burden and Standard of Proof.~~

~~(a) For purposes of this section, "proof by a preponderance of the evidence" means what is sought to be proved is more probable than not.~~

~~(b) In a hearing held to determine whether a certification, license, permit or other approval that has already been issued should be suspended, revoked, or not renewed, the department shall unless otherwise required by statute, present a prima facie case supporting its action in order to meet its burden of going forward with evidence of the violation, after which the opposing party shall bear the burden of persuasion to present evidence to convince the hearing officer that the department's position should not be upheld; and~~

~~(c) The standards for meeting the department's burden of going forward with evidence of the violation and the respondent's burden of persuasion shall be by a preponderance of the evidence.~~

~~(d) In a hearing held to determine whether an administrative fine should be imposed the department shall bear the overall burden of proof by a preponderance of the evidence.~~

~~(e) In any hearing held to review a department decision not subject to paragraph (b) or (d) of this section, the burden of proof shall be on the person seeking to overturn the decision.~~

~~(f) The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.~~

~~Ins 204.06 Motions and Replies Thereto.~~

~~(a) Unless presented during an oral session of a proceeding, motions and all replies thereto, shall be in written form and filed with the hearing officer, unless made in response to a matter asserted for the first time at the hearing or on the basis of information which was not received in time to prepare a written motion.~~

~~(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the hearing officer finds that the motion requires additional information in order to be fully and fairly considered, the hearing officer shall direct the moving party to submit the motion in writing, with supporting information, before any deadline established by the hearing officer.~~

~~(c) All motions shall state clearly and concisely:~~

~~(1) The purpose of the motion;~~

~~(2) The relief sought by the motion;~~

~~(3) The statutes, rules, orders, or other authority sanctioning the relief sought by the motion; and~~

~~(4) The facts claimed to constitute grounds for the relief requested by the motion.~~

~~(d) Replies to motions shall state clearly and concisely:~~

- ~~(1) The defense of the party filing the reply;~~
- ~~(2) The action which the party filing the reply wishes the department to take on the motion;~~
- ~~(3) The statutes, rules, orders, or other authority relied upon in defense of the motion; and~~
- ~~(4) Any facts which are additional to or different from the facts stated in the motion.~~

~~(e) A reply to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in a motion shall constitute the admission of that fact for the purpose of the motion. In the event a party filing a reply to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact.~~

~~(f) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.~~

~~(g) Replies to motions shall be filed within 10 days after the filing of the motion. Failure to reply to a motion within the time allowed shall constitute a waiver of objection to the motion, but shall not in and of itself constitute grounds for granting the motion.~~

~~(h) All motions and all replies filed with the hearing officer shall be addressed to the "Clerk, New Hampshire Insurance Department."~~

~~(i) The hearing officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion in accordance with this chapter.]~~

PART Ins 205 FILING AND SERVICE OF DOCUMENTS

Ins [204.07]205.01 Date of Issuance or Filing of Documents.

(a) All decisions, orders, notices, or other written correspondence or documents issued by or at the direction of the department shall be refutably presumed to have been issued on the date noted on the document.

(b) All written documents governed by these rules shall be deemed to have been filed with or received by the department on the actual date of receipt by the department, as evidenced by a date stamp placed on the document by the department in the normal course of business.

(c) A decision, order, notice, or other written correspondence or document issued by the department shall be deemed to have been received on the day it is:

- (1) Delivered to a party or left at the physical address of that person, if delivery is by personal delivery;*
- (2) Deposited in a depository of the United States Postal Service, if delivery is by first class mail; or*
- (3) Faxed or sent electronically, if delivery is by electronic mail.*

Ins [204.08]205.02 Format and Filing of Documents.

(a) All correspondence, pleadings, motions, or other documents filed under these rules shall:

- (1) Include the title and docket number of the proceeding, if known;

- (2) Be ~~[typewritten or]~~ clearly printed on durable paper, 8 ½ by 11 inches in size;
- (3) Be signed by the party or proponent of the document~~[;]~~ or, if the party appears by a representative, by the representative; and
- (4) Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Ins ~~[204.09]~~**205.03**.

(b) The signature on a document filed with the department shall constitute certification that:

- (1) The signer has read the document~~[;]~~;
- (2) The signer is authorized to file it;
- (3) To the best of the signer's knowledge, information, and belief there are good and sufficient grounds to support it; and
- (4) The document has not been filed for purposes of delay.

(c) All correspondence, filings, or communications intended for the hearing officer shall be addressed to:

*Hearings Clerk
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301*

(d) All petitions, motions, exhibits, memoranda, or other documents filed in connection with adjudicative proceeding shall be filed with an original and 3 copies, unless otherwise directed.

Ins ~~[204.09]~~**205.03** Delivery of Documents.

(a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by this rule shall be delivered by that party to all other parties to the proceeding.

(b) All proposed and final notices, orders, decisions, or other documents issued by the hearing officer or the commissioner pursuant to this rule~~[;]~~ shall be delivered to all parties to the proceeding.

(c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mails, addressed to the party at the last address given to the department by the party. Unless otherwise prohibited by this chapter or by law, upon the consent of any party, delivery may be by fax or electronic mail, in lieu of delivery by first class mail.

(d) Notwithstanding paragraphs (a) through (c) above, when a party appears by a representative, delivery shall be upon the representative at the address stated on the appearance filed by the representative.

Ins ~~[204.10]~~**205.04** Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in ~~[these rules]~~**this chapter** shall begin with the day after the action which sets the time period in motion~~[;]~~ and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

(d) Except where the time has been fixed by statute, the hearing officer shall for good cause, upon request or upon the hearing officer's own initiative, ~~enlarge~~**lengthen** or shorten the time provided for the filing of any document. Good cause shall include the unavailability of information, parties, witnesses, or attorneys necessary for the filing of the document, the likelihood that the filing will not be necessary because the parties anticipate a settlement, or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.

Ins 205.05 Motions and Response Thereto.

(a) Unless presented during an oral session of a proceeding, motions and all replies thereto, shall be in written form and filed with the hearing officer, unless made in response to a matter asserted for the first time at the hearing or on the basis of information which was not received in time to prepare a written motion.

(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the hearing officer finds that the motion requires additional information in order to be fully and fairly considered, the hearing officer shall direct the moving party to submit the motion in writing, with supporting information, before any deadline established by the hearing officer.

(c) All motions shall state clearly and concisely:

- (1) The purpose of the motion;***
- (2) The relief sought by the motion;***
- (3) The statutes, rules, orders, or other authority sanctioning the relief sought by the motion; and***
- (4) The facts claimed to constitute grounds for the relief requested by the motion.***

(d) Replies to motions shall state clearly and concisely:

- (1) The defense of the party filing the reply;***
- (2) The action which the party filing the reply wishes the department to take on the motion;***
- (3) The statutes, rules, orders, or other authority relied upon in defense of the motion; and***
- (4) Any facts which are additional to or different from the facts stated in the motion.***

(e) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.

(f) Replies to motions shall be filed within 10 days after the filing of the motion. Failure to reply to a motion within the time allowed shall constitute a waiver of objection to the motion but shall not in and of itself constitute grounds for granting the motion.

(g) The hearing officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion in accordance with this chapter.

Ins 205.06 Confidential Documents and Confidential Information.

(a) Except as otherwise provided by statute or rule, all pleadings, attachments to pleadings, and exhibits submitted at hearings shall be available for public inspection.

(b) A confidential document shall not be included in a pleading if it is neither required for filing nor material to the proceeding.

(c) If a confidential document is required or is material to the proceeding, the party must file the confidential document in the manner prescribed by paragraph (d) below.

(d) When a party files a document, the party shall omit or redact confidential information from the filing when the information is not required to be included for filing and is not material to the proceeding; and

(1) If none of the confidential information is required or material to the proceeding, the party should file only the version of the document from which the omissions or redactions have been made; and

(2) At the time the document is submitted to the hearing clerk, the party must clearly indicate on the document that the document has been redacted or information has been omitted pursuant to Ins 205.06.

(e) It is the responsibility of the filing party to ensure that confidential information is omitted or redacted from a document before the document is filed.

(f) If confidential information is required for filing or is material to the proceeding and must be included in the document, the filer shall file:

(1) A motion to seal as provided in paragraph (g);

(2) For inclusion in the public file, the document with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and

(3) An unredacted version of the document clearly marked as confidential.

(g) A motion to seal a confidential document or a document containing confidential information shall state the authority for the confidentiality or circumstance that requires confidentiality. An agreement of the parties that a document is confidential or contains confidential information is not a sufficient basis alone to seal the record.

(h) The hearing officer shall:

(1) Review the motion to seal and any objection to the motion to seal that may have been filed and determine whether the unredacted version of the document shall be confidential; and

(2) Issue an order setting forth the hearing officer's ruling on the motion to seal, which order shall include the duration that the confidential document or document containing confidential information shall remain under seal.

PART Ins 206 ADJUDICATIVE PROCEEDINGS

Ins 206.01 Adjudicative Proceedings.

(a) In any adjudicative proceeding before the department, all motions, requests, and actions shall be conducted pursuant to RSA 541-A:31 through 38.

(b) Hearings shall be conducted with the respondent, the department and any witnesses physically present before the hearing officer. A telephone hearing shall be conducted upon motion of any party if the hearing officer determines that:

(1) There is good cause as set forth in paragraph (c), below; and

(2) Conducting the hearing with one or more parties participating by telephone would not violate any law or rule or constitutional protections, and would promote the fair, accurate and efficient resolution of issues pending before the department.

(c) Good cause shall include:

(1) Excessive distance to the hearing location;

(2) Physical disability or impairment of the respondent;

(3) Transportation difficulties;

(4) The physical presence of the respondent would threaten the health or safety of the respondent or any other individual; or

(5) Other circumstance that would prevent the respondent from being able to appear and participate in person at the hearing.

Ins 206.02 Waiver or Suspension of Procedural Rules. The hearing officer, upon the hearing officer's own initiative or upon the motion or petition of any interested person, shall suspend or waive any requirement or limitation imposed by this chapter not otherwise contrary to law, upon reasonable notice to affected persons, when the proposed waiver or suspension appears to be lawful and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the department than would adherence to a particular rule or procedure.

Ins 206.03 Effect of Failure to Comply with the Rules or Attend the Hearing.

(a) Failure to comply with the rules in this part shall result in the denial of any petition or motion so failing to comply, or the rejection of any document so failing to comply, or the issuance of an order adverse to the person so failing to comply.

(b) If any party, to whom notice has been properly given in accordance with RSA 400-A:18, fails to attend a hearing, the hearing officer shall declare that party to be default and shall either:

(1) Dismiss the case, if the party with the burden of proof fails to appear; or

(2) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof.

Ins 206.04 Summary Suspension of Department Issued Licenses. In the case of summary suspensions, the following general provisions shall apply:

(a) When the commissioner finds that public health, safety, or welfare requires emergency

Action, and incorporates a finding to that effect in such order, summary suspension of a license shall be ordered, effective on the date specified in such order, pending proceedings for revocation or other action;

(b) An order of summary suspension shall be served prior to, simultaneously with, or after the commencement of an adjudicative proceeding seeking the suspension or revocation of a license; and

(c) The order of summary suspension shall be served upon the holder of a license, either by personal service, by certified mail, return receipt requested, electronic delivery, or by some other means for the purpose of directly informing the holder and shall become effective upon delivery to the licensee.

(d) The hearing shall be scheduled to commence within 10 working days of the effective date of the order of license suspension.

Ins 206.05 Burden and Standard of Proof.

(a) For purposes of this section, "proof by a preponderance of the evidence" means what is sought to be proved is more probable than not.

(b) In a hearing held to determine whether a certification, license, permit, or other approval that has already been issued should be suspended or revoked, the department shall, unless otherwise required by statute, present a prima facie case supporting its action in order to meet its burden of going forward with evidence of the violation, after which the opposing party shall bear the burden of persuasion to present evidence to convince the hearing officer that the department's position should not be upheld.

(c) The standards for meeting the department's burden of going forward with evidence of the violation and the respondent's burden of persuasion shall be by a preponderance of the evidence.

(d) In a hearing held to determine whether an administrative fine should be imposed the department shall bear the overall burden of proof by a preponderance of the evidence.

(e) In any hearing held pursuant to RSA 400-A:17, II(b) to review a department decision, the burden of proof shall be on the person seeking to overturn the decision.

(f) The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

~~[Ins 204.11 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as witnesses or granted intervenor status, a person who initiates an adjudicative proceeding by complaining to the department about the conduct of a party shall have no role in enforcement or disciplinary hearings.]~~

Ins [204.12]206.06 Continuances.

(a) The hearing officer shall for good cause, upon request or upon the hearing officer's own initiative, advance or postpone the time and date set for any hearing.

(b) If a postponement is requested by a party to the hearing, it shall be granted if the hearing officer determines that good cause has been demonstrated.

(c) Good cause shall include the unavailability of information, parties, witnesses, or attorneys necessary to conduct the hearing, the likelihood that the hearing will not be necessary because the parties

anticipate settlement, or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.

(d) If the date, time, and place of the continued hearing are known, the date, time, and place shall be stated on the record. If the date, time, and place of the continued hearing are not known, the hearing officer shall issue a written scheduling order stating the date, time, and place of the postponed hearing as soon as possible.

Ins [~~204.13~~]**206.07** Prehearing Conferences.

(a) At any time following the notice of hearing of an adjudicatory proceeding, the hearing officer, upon motion[;] or upon his or her own initiative, shall direct all interested parties to attend one or more prehearing conferences to aid in the disposition of the proceeding.

(b) The following may be considered at a prehearing conference:

- (1) Opportunities and procedures for settlement;
- (2) Opportunities and procedures for simplification of the issues;
- (3) Possible amendments to the pleadings;
- (4) Possible admissions of fact and of documents to avoid unnecessary proof;
- (5) Possible limitations on the number of witnesses;
- (6) Possible changes to the standard procedures which would otherwise govern the proceedings;
- (7) The distribution of written testimony, if any, and exhibits to the parties;
- (8) Possible consolidation of the examination of witnesses by the parties; and
- (9) Any other matters which might contribute to the prompt and orderly conduct of the proceeding.

(c) The department shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record or the hearing officer determines that the prehearing process is best served by conducting discussions and conferences off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.

Ins [~~204.14~~]**206.08** Discovery and Disclosure.

(a) Any party wishing discovery against another party[;] shall, by motion, seek leave to do so and shall identify the exact type of discovery requested.

(b) Discovery shall be permitted when:

- (1) It appears that the parties cannot adequately address the factual issues at the time fixed for the presentation of evidence without an opportunity to acquire data pursuant to discovery;
- (2) The requested method of discovery is reasonable and will not cause material unfairness or unreasonable expenses to any party; and
- (3) The requested discovery will not unreasonably delay the proceeding.

Ins ~~[204.15]~~**206.09** Subpoenas.

(a) Subpoenas for the attendance of witnesses at or the production of evidence in adjudicatory proceedings shall be issued only upon the order of the commissioner or pursuant to authority delegated by the commissioner. Subpoenas shall be issued in response to a motion when the commissioner determines that a subpoena is necessary for a full and fair presentation of evidence at the hearing and the information is not otherwise available to the moving party. A party requesting a subpoena shall attach a copy of the proposed subpoena to its motion. The requesting party shall be responsible for the service of the subpoena and payment of any witness fee and mileage expenses which may be required.

(b) The person to whom the subpoena is directed may, within 10 days after service of the subpoena~~[-]~~ or before the date specified in the subpoena for compliance therewith, whichever is earlier, file a motion to quash or modify the subpoena. The filing of a motion to quash or modify shall toll the time period within which the person named in the subpoena is directed to comply with the subpoena. However, if the commissioner denies the motion to quash or modify, in whole or in part, the tolling of the time period for compliance shall end and the person to whom the subpoena is directed shall comply with the subpoena, or any modification thereof, within the balance of time remaining as provided in the subpoena. The commissioner shall grant additional time to comply with the subpoena if the commissioner determines the motion to quash or modify was made in good faith and granting such additional time will not cause material unfairness to any party and will not unreasonably delay the proceeding.

(c) A subpoena shall be served by any person who is 18 years of age or older and in the manner authorized for service of subpoenas in the New Hampshire Superior Court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service. The original copy shall be immediately returned to the commissioner, or commissioner's designee who authorized the subpoena, by the person making service.

(d) Should any person fail to comply with a subpoena issued pursuant to this section, the commissioner shall employ any remedy authorized by this title or the law of New Hampshire~~[-]~~ or shall direct an interested party to seek judicial enforcement.

Ins 206.10 Evidence.

(a) Receipt of evidence shall be governed by RSA 541-A:33.

(b) All documents, materials, and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious, or legally privileged.

(c) All objections to the admissibility of evidence shall be stated as early as possible.

(d) Transcripts of testimony and documents or other materials admitted into evidence shall be public records unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5 or applicable case law.

~~[Ins 204.16 Inquiry by Hearing Officer. The hearing officer in an adjudicative proceeding shall question witnesses and make such inquiry of witnesses, parties or counsel, as the hearing officer believes appropriate to promote the fair, accurate and efficient resolution of issues pending before the department.]~~

Ins ~~[204.17]~~**206.11** Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.

(b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the presiding officer shall specify a date for the submission of proposed findings of fact and conclusions of law.

(c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

Ins [204.18]206.12 Transcripts. The entirety of all oral proceedings shall be recorded verbatim. Upon the written request to the commissioner by any party, or upon the department's own initiative, such record shall be transcribed and the requesting party shall pay all reasonable costs for such transcription.

Ins [204.19]206.13 Record. The record in a contested case shall include all of the following that are applicable in that case:

- (a) Any prehearing order;
- (b) All pleadings, motions, objections, and rulings;
- (c) Evidence received or considered;
- (d) A statement of matters officially noticed;
- (e) Proposed findings and exceptions;
- (f) Any decision, opinion, or report by the officer presiding at the hearing;
- (g) The tape recording or stenographic notes or symbols prepared for the hearing officer, together with any transcript of all or part of the hearing considered before final disposition of the adjudicative proceeding;
- (h) Staff memoranda or data submitted to the hearing officer, except advisory memoranda prepared and submitted to the hearing officer by staff of the department or others designated by the commissioner to act as advisor or assistant to the hearing officer; and
- (i) Matters placed on the record after an ex parte communication.

~~[Ins 204.20 Reopening the Record.~~

~~(a) At any time prior to the issuance of the decision on the merits, the hearing officer, on the hearing officer's own motion or on the motion of any party, shall reopen the record to receive relevant, material and non-duplicative testimony, evidence, arguments or exhibits not previously received.~~

~~(b) Requests to reopen the record made after one or more parties have left the hearing shall be made in writing.~~

~~(c) The hearing officer shall give written notice of such further proceedings if the parties are no longer present. The hearing officer shall also specify a date by which other parties shall respond to or rebut the newly received evidence.~~

~~Ins 204.21 Reconsideration on the Commissioner's Own Motion. Within 30 days of any final order, the commissioner based upon the existing record, may reconsider, revise or reverse any final action on the commissioner's own motion. If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the commissioner believes further argument or data should be considered, an appropriate order providing the parties with notice and an opportunity to be heard shall be issued before any revision is made in the department's previous action.~~

~~Ins 204.22 Stay of Department Orders.~~

~~(a) A stay of department action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration.~~

~~(b) If the commissioner, acting on the commissioner's own motion, stays the effect of any final order, the commissioner shall do so with or without a corresponding order to reconsider or reopen the proceeding.~~

~~(c) Consent agreements shall be encouraged and shall provide a legitimate conclusion to the hearing process. When the consent agreement is issued the signatories to it shall thereby waive their right to a motion to reconsider. Intervenor shall have no standing to contest the consent agreement.]~~

Ins [204.23]**206.14 Consolidation.** Whenever it shall appear to the department, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the department shall, as fairness and efficiency permit, consolidate those proceedings for hearing, [or] decision, or both, after providing the parties notice and an opportunity for hearing on the proposed consolidation.

Ins [204.24]**206.15 Severance.** Whenever it shall appear to the department, upon motion or its own initiative, that injury to the substantial rights of a party or undue delay might be thereby avoided, the department shall, as fairness and efficiency permit, sever one or more issues from a proceeding[;] and dispose of those issues in another proceeding, after providing the parties notice and an opportunity for hearing on the proposed severance.

Ins [204.25]**206.16 Limiting Number of Witnesses.** To avoid unnecessary cumulative evidence in any proceeding, the hearing officer may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing.

PART Ins 207 SETTLEMENT, DECISIONS, AND REHEARING***Ins 207.01 Settlement.***

(a) Settlements between the parties shall be encouraged in accordance with RSA 541-A:38. Parties shall attempt to settle a matter before it is scheduled for a hearing and may settle a matter at any stage of the proceedings.

(b) All settlement agreements shall:

- (1) Be in writing, describing the agreement's material terms; and*
- (2) Be signed by both parties and their attorneys or agents.*

Ins 207.02 Voluntary Surrender of License.

(a) Any licensee may voluntarily surrender their license by returning it to the department, accompanied by a signed letter stating that the licensee intends to surrender his or her license.

(b) A licensee who reapplies for licensure in New Hampshire after a voluntary surrender shall meet all of the requirements then in effect for new applicants.

(c) The voluntary surrender of a license shall have no effect upon the commissioner's authority to:

- (1) Investigate violations of insurance laws or the rules by a person licensed at the time the alleged violation occurred; or*
- (2) Impose disciplinary sanctions for violations that occurred while the person was licensed.*
- (d) Nothing in this section shall prohibit the department and a licensee from entering into a settlement agreement or a consent decree relative to any alleged violation.*

Ins 207.03 Reopening the Record.

- (a) At any time prior to the issuance of the decision on the merits, the hearing officer, on the hearing officer's own motion or on the motion of any party, shall reopen the record to receive relevant, material, and non-duplicative testimony, evidence, arguments, or exhibits not previously received.*
- (b) Requests to reopen the record made after one or more parties have left the hearing shall be made in writing.*
- (c) The hearing officer shall give written notice of such further proceedings if the parties are no longer present. The hearing officer shall also specify a date by which other parties shall respond to or rebut the newly received evidence*

Ins [204.26]207.04 Findings and Orders.

- (a) If, pursuant to Ins 203.01 (c), the commissioner has appointed a natural person other than the deputy commissioner to preside at a hearing as hearing officer, the following procedures shall apply:*
- (1) The hearing officer shall submit to the commissioner, within 35 days after the termination of a hearing, a proposed decision and order including a proposed decision and order on any dispositive motion. Any such proposed decision and order shall be delivered to all parties;*
 - (2) The parties may file exceptions and supporting memoranda of law for review by the commissioner within 20 days from the date the proposed decision and order is delivered pursuant to (a)(1) above. Replies to exceptions and legal memoranda may be filed within 10 days from the date of the filing of the document prompting the reply;*
 - (3) Requests for oral argument on exceptions to the proposed order shall be filed with the commissioner within 20 days from the date the proposed decision and order is delivered, and the commissioner shall issue an order granting or denying such request within 10 days;*
 - (4) [After receipt of all written and oral testimony, t]The commissioner shall, based upon the record, determine whether the respective parties have met their burdens of proof set forth in Ins [204.05,]206.05 and shall accordingly issue a final decision and order accepting, rejecting, or modifying the proposed decision and order. Any such order shall be subject to reconsideration of any final order pursuant to Ins [204.21]207.05 and Ins 207.06;*
 - (5) If the commissioner issues a final decision and order that rejects or otherwise modifies the proposed decision and order:*
 - a. The commissioner's factual determinations in any final order shall be based upon a review of the record;*
 - b. The record shall provide a reasonable basis supporting the rejection or modification of the findings and rulings of the hearing officer;*

c. The final decision shall adequately explain the grounds for the commissioner's decision; **and**

d. The commissioner shall review all evidence in the record and resolve any evidentiary conflicts by applying the commissioner's own expertise and technical judgment; and

(6) The final order shall comply with all requirements set forth in (c) of this section.

(b) If the commissioner or deputy commissioner has presided over the hearing, the commissioner or deputy commissioner, as appropriate, shall issue a final decision and order consistent with the requirement of (c) of this section.

(c) The final decision and order shall:

(1) Be issued within 90 days of the termination of the hearing, pursuant to RSA 400-A:23, II.;

(2) Be made on the basis of the evidence of record presented at the hearing and rationally supportable by such evidence;

(3) Be in writing or stated in the record;

(4) Include findings of fact and conclusions of law, separately stated; and

(5) Be the final action of the department, subject to the reconsideration of any final order pursuant to Ins [204.21]207.05 and Ins 207.06.

(d) No factual information received or known that is not evidence of record shall be considered in any final decision and order.

(e) Request for rehearings and appeals from a final action shall be made in writing and shall be made pursuant to [the provisions of] RSA 541.

Ins 207.05 Reconsideration on the Commissioner's Own Motion. Within 30 days of any final order, the commissioner, based upon the existing record, may reconsider, revise, or reverse any final action on the commissioner's own motion. If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the commissioner believes further argument or data should be considered, an appropriate order providing the parties with notice and an opportunity to be heard shall be issued before any revision is made in the department's previous action

Ins 207.06 Motion for Reconsideration.

(a) A motion for reconsideration shall be filed within 30 days of the final decision.

(b) A motion for reconsideration shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the final decision to be unlawful, unjust, unreasonable, or illegal in respect to jurisdiction, authority, or observance of the law, an abuse of discretion or arbitrary unreasonable, or capricious;

(3) State concisely the factual findings, reasoning, or legal conclusion proposed by the

moving party; and

- (4) Include any argument or memorandum of law the moving party wishes to file.*
- (c) Any objections to a motion for reconsideration shall be filed within 5 days.*

Ins 207.07 Stay of Department Orders.

(a) A stay of department action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration.

(b) If the commissioner, acting on the commissioner's own motion, stays the effect of any final order, the commissioner shall do so with or without a corresponding order to reconsider or reopen the proceeding.

(c) Consent agreements shall be encouraged and shall provide a legitimate conclusion to the hearing process. When the consent agreement is issued, the signatories to it shall thereby waive their right to a motion to reconsider. Intervenors shall have no standing to contest the consent agreement.

Ins ~~[204:27]~~207.08 Record Retention. The department shall keep a decision or order on file in its records for at least 6 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:[40]31.

PART Ins 208 PROCEEDINGS TO DETERMINE COMMERCIAL REASONABLENESS OF HEALTH CARE FEES

Ins 208.01 Scope

(a) Ins 208 contains requirements for proceedings before the department under RSA 420-J:8-e to determine whether a fee charged for health care services submitted to an insurance carrier for payment represents a commercially reasonable value, based on payments for similar services from New Hampshire insurance carriers to New Hampshire health care providers.

(b) The requirements of Ins 208 shall be in addition to the hearing standards under Ins 201, Ins 202, Ins 203, Ins 204, Ins 205, Ins 206, and Ins 207, which shall be applicable unless specifically provided herein.

Ins 208.02 Petition for Hearing.

(a) In the event of a dispute between a health care provider and an insurance carrier relative to the reasonable value of a service under RSA 329:31-b, either the provider or the insurance carrier may petition for a hearing under RSA 400-A:17 and Ins 208.

(b) The petitioner shall file an original and 2 copies of the petition. Such petition shall set forth the following information:

- (1) The rate the petitioning party believes is commercially reasonable;*
- (2) The evidence and methodology for asserting that the fee is reasonable;*
- (3) The relevant facts relating to the billing code used;*

(4) The efforts made by the parties to resolve the dispute prior to petitioning the commissioner for review, including a statement of whether the parties have engaged in mediation; and

(5) A certification that the other party and the Data Analytics Division of the Insurance Department has been served with the petition.

(c) Any petition which does not contain the information required in (b) above shall be inadequate.

Ins 208.03 Response to the Petition.

(a) Within 10 days of the filing of the petition for a hearing, the responding party shall file a response to the petition.

(b) The respondent shall file an original and 2 copies of the response. Such response shall set forth the following information:

(1) The rate the responding party believes is commercially reasonable;

(2) The evidence and methodology for asserting that the fee is reasonable;

(3) Any facts which are additional to or different from the facts stated in the petition; and

(4) A certification that the other party and the Data Analytics Division of the Insurance Department has been served with the petition;

(c) Failure to file a response to the petition shall result in a default finding that the petitioning parties proposed rate is commercially reasonable.

Ins 208.04 Prehearing Conference. *An order scheduling a prehearing conference shall be issued within 10 days of the filing of the response to the petition.*

Ins 208.05 Prehearing Statements.

(a) At least 7 days before the prehearing conference, all parties shall file with the hearing clerk and serve on the other parties prehearing statements.

(b) Prehearing statements shall include, by numbered paragraphs, a detailed, comprehensive, and good faith statement, setting forth the following:

(1) Statement of the facts;

(2) Disputed issues of fact;

(3) Applicable law;

(4) The rate the party believes is commercially reasonable;

(5) A detailed description of the party's methodology for calculating the rate;

(6) A list of all exhibits to be offered in the direct case of each party;

(7) A copy of each document or exhibit;

(8) A list of all witnesses to be called at the hearing together with a brief summary of their testimony; and

(9) The status of settlement negotiations.

(c) Except for good cause shown, only witnesses listed in the prehearing statement will be allowed to testify and only exhibits, so listed, will be received in evidence.

Ins 208.06 Intervention by the Department.

(a) At any time prior to the issuance of the decision on the merits, the department may file a motion to intervene as a party. Such motion shall be in writing and served upon the parties.

(b) If the department is allowed to intervene after the close of the record, the hearing officer shall reopen the record to receive relevant, material, and non-duplicative testimony, evidence, arguments, or exhibits not previously received and allow.

PART Ins [205]209 PETITION FOR DECLARATORY RULING

Ins [205.01]209.01 Petitions.

(a) Any person may request a declaratory ruling from the department on matters within its jurisdiction by filing an original and 4 copies of the petition. Such petition for declaratory ruling shall set forth the following information:

- (1)** The exact ruling being requested, including any rule or statute implicated;
- (2)** The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law; ***and***
- (3)** A statement as to how the language of the rule or statute applies to the circumstances of the petitioner's case.

(b) Any petition for declaratory ruling which does not contain the information required in (a) above shall be inadequate.

Ins [205.02]209.02 Action on Petitions.

(a) If examination of a petition for declaratory ruling reveals that other persons would be substantially affected by the proposed ruling, the department shall require service of the petition on such persons and advise them that they may file a reply.

(b) The petitioner and any persons served with notice of the petition shall provide such further information or participate in such evidentiary or other proceedings as the department may direct after reviewing the petition and any replies received.

(c) The commissioner shall act on the petition as follows:

- (1)** Issue a written ruling within 30 days after receipt of all information or the conclusion of any evidentiary or other proceeding;
- (2)** Reject the petition if:
 - a.** It is inadequate;
 - b.** It involves a hypothetical situation or otherwise seeks advice as to how the commissioner would decide a future case;

- c. It does not implicate the legal rights or responsibilities of the petitioner;
- d. It is beyond the scope of the commissioner's statutory authority[-];
- e. There is pending legislation or rulemaking, a pending administrative or judicial proceeding, or a pending investigation or examination that will address the petition; or
- f. Other procedural options are available to the interested parties or the department.

PART Ins [206]210 RULEMAKING

Ins [206.01]210.01 How Adopted. A rule of the department or any amendment or repeal thereof shall be adopted by the commissioner after notice and opportunity for hearing in accordance with RSA 541-A. Rules may be proposed by any person pursuant to RSA 541-A:4[;]or by the agency.

Ins [206.02]210.02 Manner for Adoption.

(a) The department shall commence rulemaking by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person pursuant to Ins [205] 209 and Ins [206.03] 210.03.

(b) With respect to any proposed rule, the department shall conduct rulemaking and adoption proceedings pursuant to RSA 541-A.

Ins [206.03]210.03 Petitions to Department for Rulemaking. [(a)-]Petitions from interested persons requesting adoption, amendment, or repeal of a rule shall be received and disposed of in the following manner:

- [—(1)](a) Petitions shall be submitted to the commissioner by letter;
- [—(2)](b) Petitions shall contain the following:
 - [—a.](1) The date of the petitioning;
 - [—b.](2) The petitioner's name, address, and telephone number; and
 - [—c.](3) The name and address of any other person or organization petitioner represents;
- [—(3)](c) The petitioner shall sign the petition;
- [—(4)](d) The petitions shall be typed or printed in a legible fashion;
- [—(5)](e) If possible, petitioner shall cite the rule and its provisions and specify any changes desired, if repeal or amendment is sought, and shall provide the text or approximate text of the proposed rule, if promulgation is sought;
- [—(6)](f) The petitioner shall include a detailed and complete statement of the petitioner's reasons in support of the requested action;
- [—(7)](g) If the commissioner determines that any petition is deficient in any respect, the commissioner shall, within 10 working days of receipt of said petition, notify the petitioner, in writing, of the specific deficiencies and allow the petitioner to amend the petition; and
- [—(8)](h) Within 30 days of receipt of a petition or amended petition for rulemaking that meets the requirements of (a)[(1)-(6)]-(g), the commissioner shall grant the petition and initiate rulemaking

proceedings in accordance with RSA 541-A:4, if the commissioner determines that the department has authority to take the proposed action and the proposed action is:

[~~—a.~~](1) Consistent with state and federal law and policy; and

[~~—b.~~](2) Necessary to the efficient and effective implementation of the rules that are within the jurisdiction of the department.

Ins [~~206.04~~]**210.04** Public Hearings.

(a) Pursuant to the provisions of RSA 541-A, the department shall conduct a public hearing on all proposed rules.

(b) The public hearing shall afford all interested persons opportunity to testify.

(c) The presiding officer at a public hearing in a rulemaking proceeding shall be the commissioner, deputy commissioner, or an individual designated by the commissioner to preside at the hearing.

(d) Notice of the date, time, and place of the public hearing for a rulemaking proceeding held pursuant to RSA 541-A shall be given by publication in the rulemaking register pursuant to RSA 541-A.

(e) A record of the public hearing shall be kept by electronic recording or other method that shall provide a verbatim record.

(f) Any individual wishing to submit exhibits or written testimony at a public hearing shall submit such exhibits or testimony to the presiding officer, provided the individual signs and dates such testimony or exhibits.

(g) Any individual wishing to testify at a public hearing shall submit in writing to the presiding officer their name, address, and whom the individual represents, if anyone. The presiding officer shall call each individual to present their testimony. The presiding officer shall encourage individuals who testify orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(h) Any comments, questions, or discussions that the presiding officer determines as not to be relevant to the subject of the public hearing shall be ruled out of order by the presiding officer.

(i) When the presiding officer determines that no person has further questions or comments that are relevant to the subject of the hearing, the presiding officer shall close the hearing.

(j) **Pursuant to RSA 541-A**, [~~¶~~]the department shall provide a period of at least [~~40~~]5 days after the hearing to afford all interested persons the opportunity to submit data, views, or arguments in writing or electronic format.

(k) A continuance of a public hearing on a proposed rule shall be granted in accordance with RSA 541-A.

(l) If a public hearing is continued, and the later date, time, and place are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and place on the record in accordance with RSA 541-A. If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice shall be given of the date, time, and place of the continued hearing in accordance with RSA 541-A.

Ins [~~206.05~~]**210.05** Request for Notice of Intended Department Rulemaking Action.

(a) Pursuant to the provisions of RSA 541-A, the department shall maintain a current listing of all persons having made a request for advance notice of the rulemaking proceedings.

(b) The department shall charge a fee of \$.25 per page as the copy fee for proposed department rules.

~~[PART Ins 207 EXPLANATION OF THE RULE]~~

Ins ~~[207.01]~~**210.06** Explanation of the Rule. The department shall provide, if requested by any person at any time before 30 days after the final adoption of the rule, an explanation of the rule, including:

(a) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(b) An explanation of why the department overruled the arguments and considerations against the rule, *if any*.

PART Ins 211 WAIVER OF RULES

Ins 211.01 Waiver of Rules.

(a) The commissioner, upon the commissioner's own initiative or upon request by an insurer, shall waive any requirement of this chapter if such waiver does not contradict the objective or intent of the rule and:

- (1) Applying the rule provision would cause confusion or would be misleading to consumers;***
 - (2) The rule provision is in whole or in part inapplicable to the given circumstances;***
 - (3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or***
 - (4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.***
- (b) No requirement prescribed by statute shall be waived unless expressly authorized by law.***
- (c) Any person or entity seeking a waiver shall make a request in writing.***
- (d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.***

APPENDIX

Rule	Specific State Statute the Rule Implements
Ins 201.01	RSA 400-A:15, I; RSA 400-A:17-24; RSA 417:6-16; RSA 541; RSA 541-A:30-a
Ins 202.01	RSA 400-A:15, I; RSA 541-A:1; RSA 541-A:36;
Ins 203.01	RSA 400-A:13; RSA 400-A:15, I; RSA 400-A:17; RSA 400-A:19; RSA 417:7; RSA 541-A:30-a;
Ins 203.02	RSA 400-A:15, I; RSA 541-A:30-a
Ins 203.03	RSA 400-A:15, I; RSA 400-A:19; RSA 417:7; RSA 541-A:31
Ins 204.01	RSA 400-A:15, I; RSA 400-A:19; RSA 400-A:20; RSA 417:7 and 8; RSA 541-A:31
Ins 204.02	RSA 400-A:15, I; RSA 400-A:20; RSA 417:7 and 8; RSA 541-A:31
Ins 204.03	RSA 400-A:15, I; RSA 400-A:19; RSA 400-A:20; RSA 400-A:21; RSA 417:7 and 8; RSA 541-A:31
Ins 204.04	RSA 400-A:15, I; RSA 417:7; RSA 541-A:30-a; RSA 541-A:31
Ins 204.05	RSA 400-A:10; RSA 400-A:15, I; RSA 417:7; RSA 541-A:30-a; RSA 541-A:31; RSA 541-A:33
Ins 204.06	RSA 400-A:15, I; RSA 400-A:19; RSA 417:12; RSA 417:18; RSA 417:20; RSA 541-A:30-a; RSA 541-A:32; RSA 541-A:38;
Ins 204.07	RSA 400-A:15, I; RSA 400-A:19; RSA 541-A:36
Ins 205.01	RSA 400-A:15, I; RSA 400-A:14,19; RSA 417:7; RSA 541-A:33; RSA 541-A:30-a
Ins 205.02	RSA 400-A:15, I; RSA 541-A:30-a; 541-A:31
Ins 205.03	RSA 400-A:14; RSA 400-A:15, I; RSA 400-A:19; RSA 541-A:30-a; RSA 541-A:31; RSA 541-A:36
Ins 205.04	RSA 400-A:14; RSA 400-A:15, I; RSA 400-A:19; RSA 541-A:33; RSA 541-A:30-a
Ins 205.05	RSA 400-A:15, I; RSA 541-A:31
Ins 205.06	RSA 400-A:15, I; RSA 400-A:25
Ins 206.01	RSA 400-A:15, I; RSA 400-A:19; RSA 417:7; RSA 541-A:31 – 38;
Ins 206.02	RSA 400-A:15, I; RSA 417:7; RSA 541-A:30-a; RSA 541-A:37
Ins 206.03	RSA 400-A:15, I; RSA 400-A:21; RSA 541-A:30-a
Ins 206.04	RSA 400-A:15, I; RSA 541-A:30
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